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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/826,258	04/03/2001	P. Timothy Moore	14856.5.2.	2703

7590

01/23/2003

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EXAMINER

SPISICH, MARK

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 01/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application N .

09/826,258

Applicant( )

MOORE ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-35 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 12-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 4, 7-11, 20 and 22-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## **DETAILED ACTION**

### ***Priority***

If applicant intends to claim priority of provisional application 60/109,769 filed 11/25/1998, the first page of the specification must be amended to include a reference to it.

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: #18 as per page 15, line 7. A proposed drawing correction (or an amendment to the specification to overcome this objection) or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Notice of Informal Examiner's Amendment***

The following changes have been made by the examiner: (1) "32" (page 13, line 13) changed to -34 -; (2) "24" (page 15, line 6) changed to - 34 -; and (3) "500" (page 21, line 5) changed to - 502 --.

### ***Comment Re Claims 19 and 21***

It is noted that claims 19 and 21 are exact duplicates of each other.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Gunjian (USP 4,819,291). The patent to Gunjian discloses a brush (10) for cleaning the passageway in a device (28) comprising a shaft (20), means (24) or even the handle (12) transmitting a cleaning force exerted on the shaft and an outer sheath (18) covering at least a portion of the shaft (20). The recitation of the intended use fails to define over the structure of the prior art.

4. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Watanabe (USP 4,889,106). The patent to Watanabe discloses a brush (30) for cleaning a passageway in a medical device (10) comprising a shaft (31), means (34) for transmitting a cleaning force exerted on the shaft and an outer sheath (33) covering at least a portion of the shaft.

5. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Cox et al (USP 5,297,310). The patent to Cox discloses a brush (10) for cleaning passageways in medical devices comprising a shaft (15), outer sheath (11) and fill wire (the right portion of fig 3) provided with an atraumatic tip (12) and which reads on the recited "means for transmitting".

6. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Poje et al (USP 5,168,593). The patent to Poje discloses a brush for cleaning passageways in medical devices comprising a shaft (18), means in the form of a fill wire (14,26) and an atraumatic tip (44) for transmitting a cleaning force and an outer sheath (16).

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7. Claims 1-3, 12-14 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Bourrelly (USP 5,615,439). The patent to Bourrelly discloses a brush comprising an atraumatic tip (118,218), fill wire (114'), shaft (110'), inner sheath (120'a) and outer sheath (126') (see fig 1A) and further wherein the brush is adapted to clean passageways in a medical device.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims ~~5,6~~, 15, 19 and ~~21~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Bourrelly (USP 5,615,439). The patent to Bourrelly discloses the invention substantially as claimed with the exception of shaft being a memory alloy, in particular NiTiNOL. It would have been obvious to one of ordinary skill to have modified the shaft (the support member 110, 110' or 210) to be of such an alloy so that the handle would also be capable of at least partially negotiating any curves in the passageway.

***Allowable Subject Matter***

10. Claims 25-35 are allowed.

11. Claims 4, 7-11, 20 and 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS  
January 22, 2003